

**UNITED STATES DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/004,803 01/09/98 EPPS

J

PM82/0525

John R. Merkling  
310 South Yaupon  
Richwood TX 77531-2229

EXAMINER

STRIMBU, G

ART UNIT

PAPER NUMBER

3634

DATE MAILED:

05/25/01

32

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

<h2 style="margin: 0;">Office Action Summary</h2>	Application No. <b>09/004,803</b>	Applicant(s) <b>Epps et al.</b>	
	Examiner <b>Gregory J. Strimbu</b>	Art Unit <b>3634</b>	
<i>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</i>			
<b>Period for Reply</b>			
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.</p>			
<ul style="list-style-type: none"> <li>- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.</li> <li>- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.</li> <li>- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.</li> <li>- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).</li> <li>- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</li> </ul>			
<b>Status</b>			
1) <input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>4/12/01, 4/25/01 and 5/4/01</u>			
2a) <input type="checkbox"/> This action is FINAL.      2b) <input checked="" type="checkbox"/> This action is non-final.			
3) <input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11; 453 O.G. 213.			
<b>Disposition of Claims</b>			
4) <input checked="" type="checkbox"/> Claim(s) <u>1-5, 7, 9, 10, and 12-16</u> is/are pending in the application.			
4a) Of the above, claim(s) _____ is/are withdrawn from consideration.			
5) <input type="checkbox"/> Claim(s) _____ is/are allowed.			
6) <input checked="" type="checkbox"/> Claim(s) <u>1-5, 7, 9, 10, and 12-16</u> is/are rejected.			
7) <input type="checkbox"/> Claim(s) _____ is/are objected to.			
8) <input type="checkbox"/> Claims _____ are subject to restriction and/or election requirement.			
<b>Application Papers</b>			
9) <input checked="" type="checkbox"/> The specification is objected to by the Examiner.			
10) <input type="checkbox"/> The drawing(s) filed on _____ is/are objected to by the Examiner.			
11) <input checked="" type="checkbox"/> The proposed drawing correction filed on <u>Jul 19, 2000</u> is: a) <input checked="" type="checkbox"/> approved b) <input type="checkbox"/> disapproved.			
12) <input type="checkbox"/> The oath or declaration is objected to by the Examiner.			
<b>Priority under 35 U.S.C. § 119</b>			
13) <input type="checkbox"/> Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).			
a) <input type="checkbox"/> All b) <input type="checkbox"/> Some* c) <input type="checkbox"/> None of: 1. <input type="checkbox"/> Certified copies of the priority documents have been received. 2. <input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3. <input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).			
*See the attached detailed Office action for a list of the certified copies not received.			
14) <input type="checkbox"/> Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).			
<b>Attachment(s)</b>			
15) <input type="checkbox"/> Notice of References Cited (PTO-892)			
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)			
17) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____			
18) <input checked="" type="checkbox"/> Interview Summary (PTO-413) Paper No(s). <u>32</u>			
19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)			
20) <input type="checkbox"/> Other: _____			

Art Unit: 3634

*Drawings*

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on July 19, 2000 have been approved.

*Specification*

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the proximity sensor is focused upward at an angle that deviates from a vertical direction by not more than about 10 degrees (claims 1-3), a ring which rises above the sensor (claims 13 and 14) and a projection extending beyond the lens (claim 15).

The amendment filed April 25, 2001 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the angle  $\alpha$  . . between 0 about 10 degrees on lines 27-28 of page 5 of the substitute specification.

Applicant is required to cancel the new matter in the reply to this Office action.

Art Unit: 3634

***Claim Rejections - 35 USC § 112***

Claims 1, 3-5, 9, 10 and 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “sensor sensors” on line 5 of claim 1 render the claims indefinite because it is unclear if the applicant is attempting to set forth one sensor or two sensors. Recitations such as “angle” on line 2 of claim 10 render the claims indefinite because it is unclear if the applicant is referring to the angle set forth above or is attempting to set forth another angle in addition to the one set forth above. Recitations such as “the window” on line 2 of claim 12 render the claims indefinite because it is unclear whether or not the applicant is referring to the window assembly set forth above. Recitations such as “sufficient inhibit objects” on line 3 of claim 15 render the claims indefinite because they are grammatically awkward and confusing.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, 9, 10, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Jonsson ‘912. The admitted prior art of figure 5

Art Unit: 3634

discloses a fast food service window comprising a window assembly with at least one movable window member 16, a window operator assembly (not shown, but disposed behind upper frame member 21) mechanically coupled to the movable window member 16, a proximity sensor 60 electrically coupled to the window operator assembly, wherein the movable window member 16 opens whenever a person is sensed by the proximity sensor 60. The movable window member 16 is opened when an infrared beam is detected by an infrared receiver 62 and is closed when the infrared beam is not detected by the infrared receiver 62. The sensor 60 has an integral emitter 61 and receiver 62. The admitted prior art of figure 5 is silent concerning focusing a plurality of sensors upwardly.

However, Jonsson '912 discloses a sensor 10 having a plurality of integral infrared emitters 14 and sensors 16. The sensors 16 and the emitters 14 are angled upwardly as shown in figure 4. The sensor 10 is angled such that it will only operate the door when a person is in a predetermined desired position and will operate the door when an extended arm of a person is over the proximity sensor.

It would have been obvious to one of ordinary skill in the art to position the plurality of sensors of the admitted prior art of figure 5 upwardly to only operate the door when a person is in a desired predetermined position, as taught by Jonsson '912, to prevent the door from unexpectedly opening, to conserve energy and to increase the working life of the door. Moreover, one with ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would

Art Unit: 3634

have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to focus the proximity sensor upwardly at an angle that deviates from a vertical direction by not more than about 10 degrees and to focus the sensor such that the torso of a person approaching the window is not detected by the sensor to ensure that window operates only when desired.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of figure 5 in view of Jonsson '912 as applied to claims 1-5, 7, 9, 10, 12 and 16 above, and further in view of Hagenbook. The admitted prior art of figure 5 is silent concerning a ring which rises above the sensor.

However, Hagenbook discloses a proximity sensor 93 which is surrounded by a ring and a lens system 30 which rises above the sensor 93.

It would have been obvious to one of ordinary skill in the art to provide the admitted prior art of figure 5, as modified above, with rings, as taught by Hagenbook, to more accurately direct the sensor beams to prevent unwanted activation of the window.

#### *Response to Arguments*

Applicant's arguments filed April 12, 2001 have been considered but they are not persuasive.

Art Unit: 3634

The examiner agrees with the applicant's position regarding page 6 of the response of July 19, 2000. Therefore, the applicant has not admitted that the admitted prior art of figure 5 has upwardly focused sensors.

With respect to the applicant's comments concerning Hagenbook, the examiner respectfully disagrees. Hagenbook discloses a proximity sensor since the sensor senses when a person is in close proximity to the door so as to operate the door. The term "proximity sensor" is not so limited as to require both the emitter and receiver to be in the same enclosure or require that the sensor only detect reflected radiant energy. Assuming arguendo that Hagenbook fails to disclose a proximity sensor, Hagenbook still discloses a sensor with the applicant's claimed structure, i.e., the ring. Finally, it should be pointed out that the ring of Hagenbook rises above at least a portion of the sensor and thus meets the applicant's claimed limitation of rising above the sensor. Nothing in claim 13 requires the ring to extend above the entire sensor.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect to the applicant's comments concerning the admitted prior art of figure 5, the examiner respectfully disagrees. The admitted prior art of figure 5 discloses a proximity sensor since the sensor senses when a person is in close proximity to the window so as to operate the

Art Unit: 3634

window. The term "proximity sensor" is not so limited as to require that the sensor only detect reflected radiant energy.

With respect to the applicant's comments concerning Jonsson '912, the examiner respectfully disagrees. The applicant's invention rests solely in focusing the sensors upwardly at an angle of about 10 degrees. Jonsson '912 clearly discloses preventing false openings by providing upwardly facing sensors and it is the examiner's position that one with ordinary skill in the art could easily combine the teachings of the admitted prior art of figure 5 and Jonsson '912 such that the sensors of the admitted prior art of figure 5 are focused upwardly. Moreover, one with ordinary skill in the art is expected to experiment with parameters so as to ascertain the optimum workable ranges for a particular environment. Therefore, one with ordinary skill in the art, through experimentation and optimization, would determine that 10 degrees is the optimum workable range for a fast food service window environment.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is (703) 305-3979. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 4:30 P.M. The fax phone number for this Group is (703) 305-3597. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.



Gregory J. Strimbu  
Patent Examiner  
Art Unit 3634